

CS 100

MONTANA LEGISLATIVE HISTORY

Chapter 3-73 19 80

Bill H _____ S 297 Original bill & history ✓ C

H. Committee on Judiciary

Hearing Date(s) Feb 09 ✓ C

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Date Out Feb 09 ✓ C

S. Committee on Judiciary

Hearing Date(s) Mar 08 ✓ C

Mar 15 ✓ C

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Mar 15 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

2/02	REFERRED TO STATE ADMINISTRATION		
2/03	FISCAL NOTE REQUESTED		
2/07	FISCAL NOTE RECEIVED		
2/07	FISCAL NOTE PRINTED		
2/09	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/14	2ND READING PASSED	49	0
2/15	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO HIGHWAYS & TRANSPORTATION		
3/13	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED		
3/25	2ND READING CONCURRED	91	5
3/27	3RD READING CONCURRED	91	6
	RETURNED TO SENATE		
4/06	SIGNED BY PRESIDENT		
4/06	SIGNED BY SPEAKER		
4/07	TRANSMITTED TO GOVERNOR		
4/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 392		
	EFFECTIVE DATE: 10/01/95		

SB 296 INTRODUCED BY HARDING, ET AL.
ALLOW NONPROFIT ORGANIZATIONS TO SELL BAKED GOODS AND PRESERVES

2/02	INTRODUCED		
2/02	FIRST READING		
2/02	REFERRED TO LOCAL GOVERNMENT		
2/03	FISCAL NOTE REQUESTED		
2/07	FISCAL NOTE RECEIVED		
2/10	FISCAL NOTE PRINTED		
2/14	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	50	0
2/21	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/22	FIRST READING		
2/22	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/14	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED	97	1
3/25	3RD READING CONCURRED	98	0
	RETURNED TO SENATE		
3/28	SIGNED BY PRESIDENT		
3/28	SIGNED BY SPEAKER		
3/28	TRANSMITTED TO GOVERNOR		
3/31	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 315		
	EFFECTIVE DATE: 03/31/95		

SB 297 INTRODUCED BY DOHERTY, ET AL.
CLARIFY OFFENSES OF FAILING TO CARRY AN APPROVED INSURANCE CARD IN A MOTOR VEHICLE AND FAILING TO EXHIBIT THE INSURANCE CARD UPON DEMAND

2/02	INTRODUCED		
2/02	FIRST READING		
2/02	REFERRED TO JUDICIARY		

2/03	FISCAL NOTE REQUESTED		
2/07	FISCAL NOTE RECEIVED		
2/07	FISCAL NOTE PRINTED		
2/09	HEARING		
2/09	COMMITTEE REPORT—BILL PASSED		
2/10	2ND READING PASSED	42	7
2/11	3RD READING PASSED	37	11
	TRANSMITTED TO HOUSE		
2/11	FIRST READING		
2/15	REFERRED TO JUDICIARY		
3/08	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		
3/25	2ND READING CONCURRED	74	24
3/27	3RD READING CONCURRED	77	21
	RETURNED TO SENATE		
4/06	SIGNED BY PRESIDENT		
4/06	SIGNED BY SPEAKER		
4/07	TRANSMITTED TO GOVERNOR		
4/12	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 393		
	EFFECTIVE DATE: 10/01/95		

SB 298 INTRODUCED BY VAN VALKENBURG, ET AL.

PROVIDE FOR A SERVICE CHARGE UPON THE DISHONOR OR STOP
PAYMENT OF A CHECK, DRAFT, OR ORDER FOR PAYMENT

2/02	INTRODUCED		
2/02	FIRST READING		
2/02	REFERRED TO BUSINESS & INDUSTRY		
2/10	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	49	1
2/16	3RD READING PASSED	49	1
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/14	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED	75	23
3/25	3RD READING CONCURRED	75	23
	RETURNED TO SENATE		
3/28	SIGNED BY PRESIDENT		
3/28	SIGNED BY SPEAKER		
3/28	TRANSMITTED TO GOVERNOR		
3/30	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 304		
	EFFECTIVE DATE: 10/01/95		

SB 299 INTRODUCED BY BECK, ET AL.

PROVIDE A PROCEDURE FOR TERMINATING LOCAL WATER QUALITY
DISTRICTS OR JOINT LOCAL WATER QUALITY DISTRICTS

2/02	INTRODUCED		
2/02	FIRST READING		
2/02	REFERRED TO LOCAL GOVERNMENT		
2/16	HEARING		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	50	0
2/21	3RD READING PASSED	49	1

SENATE BILL NO. 297

INTRODUCED BY

Shirley W. Ryan Van Valkenburg

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE OFFENSES OF FAILING TO CARRY AN APPROVED INSURANCE CARD IN A MOTOR VEHICLE AND FAILING TO EXHIBIT THE INSURANCE CARD UPON DEMAND; PROVIDING THAT A PERSON CONVICTED OF ONE OF THOSE OFFENSES MUST BE ASSESSED 5 POINTS UNDER THE HABITUAL TRAFFIC OFFENDER LAW; AND AMENDING SECTIONS 61-6-301, 61-6-302, 61-6-304, AND 61-11-203, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 61-6-301, MCA, is amended to read:

"61-6-301. Required motor vehicle insurance -- family member exclusion. (1) (a) Except as provided in subsection (1)(b), an owner of a motor vehicle ~~which~~ that is registered and operated in Montana by the owner or with ~~his~~ the owner's permission shall continuously provide insurance against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of a motor vehicle, as defined in 61-1-102, in an amount not less than that required by 61-6-103, or a certificate of self-insurance issued in accordance with 61-6-143.

(b) Notwithstanding the mandatory motor vehicle liability insurance protection provided for in subsection (1)(a), nothing in this part may be construed to prohibit the exclusion from insurance coverage of a named family member in a motor vehicle liability insurance policy.

(2) A motor vehicle owner who prefers to post an indemnity bond with the department in lieu of obtaining a policy of liability insurance may do so. The bond must guarantee that any loss resulting from liability imposed by law for bodily injury, death, or damage to property ~~suffered by any person~~ caused by accident and arising out of the operation, maintenance, and use of the motor vehicle sought to be registered must be paid within 30 days after final judgment is entered establishing the liability. The indemnity bond must guarantee payment in the amount provided for insurance under subsection (1).

(3) Any bond given in connection with this section is a continuing instrument and must cover the period for which the motor vehicle is to be registered and operated. The bond must be on a form approved by the commissioner of insurance and must be with a surety company authorized to do business in the

1 state.

2 (4) It is unlawful for a person to operate a motor vehicle upon ways of this state open to the public
3 without a valid policy of liability insurance in effect in an amount not less than that required by 61-6-103,
4 unless the person has been issued a certificate of self-insurance under 61-6-143, has posted an indemnity
5 bond with the department as provided in this section, or is operating a vehicle exempt under 61-6-303."
6

7 **Section 2.** Section 61-6-302, MCA, is amended to read:

8 **"61-6-302. Proof of compliance.** (1) The registration receipt required by 61-3-322 must contain
9 a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate
10 the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted
11 indemnity bond, as required by 61-6-301.

12 ~~(2) An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose~~
13 ~~certificate of self insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender~~
14 ~~the registration and license plates for the vehicle to the county treasurer for delivery to the department and~~
15 ~~may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as~~
16 ~~required and the vehicle is again registered and licensed.~~

17 ~~(3) Every~~ Each person shall carry in a motor vehicle being operated by the person an insurance card
18 approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of
19 compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of a
20 justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy
21 or inspector of the department. A person commits an offense under this subsection if the person fails to
22 carry the insurance card in a motor vehicle or fails to exhibit the insurance card upon demand of a person
23 specified in this subsection. However, a person charged with violating this subsection may not be
24 convicted if the person produces in court or the office of the arresting officer proof of insurance valid at
25 the time of arrest."
26

27 **Section 3.** Section 61-6-304, MCA, is amended to read:

28 ~~"61-6-304. Penalties. (1) It is unlawful for any person to operate a motor vehicle upon ways of this~~
29 ~~state open to the public without a valid policy of liability insurance in effect in an amount not less than that~~
30 ~~provided in 61-6-301 or unless the person has been issued a certificate of self insurance pursuant to~~

~~61-6-143 or has previously posted an indemnity bond with the department as provided by 61-6-301 or is operating a vehicle exempt under 61-6-303.~~

~~(2)(1)~~ Conviction of a first offense under 61-6-301 ~~through 61-6-304~~ or 61-6-302 is punishable by a fine of not less than \$250 or more than \$500 or by imprisonment in the county jail for not more than 10 days, or both. A second conviction is punishable by a fine of \$350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent conviction is punishable by a fine of \$500 or by imprisonment in the county jail for not more than 10 days, or both.

~~(3)(2)~~ Upon a second or subsequent conviction under 61-6-301 or 61-6-302, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall send the receipt and plates, along with a copy of the complaint and dispositional order, to the department, which shall immediately suspend the receipt and plates for a period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction. The receipt and plates may not be reinstated until the expiration of that period, but if the vehicle is transferred to a new owner, the new owner is entitled to register the vehicle.

~~(4)(3)~~ The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

~~(5)(4)~~ A court may not defer imposition of penalties provided by this section."

Section 4. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle,

1 or negligent vehicular assault, 12 points;

2 (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in
3 the commission of which a motor vehicle is used, 12 points;

4 (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or
5 operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

6 (e) operating a motor vehicle while ~~his~~ the license to do so has been suspended or revoked, 6
7 points;

8 (f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any
9 person to stop at the scene of the accident and give the required information and assistance, as defined
10 in 61-7-105, 8 points;

11 (g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop
12 at the scene of the accident and give the required information or failure to otherwise ~~fail to~~ report an
13 accident in violation of the law, 4 points;

14 (h) reckless driving, 5 points;

15 (i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

16 (j) a any of the mandatory motor vehicle liability protection ~~offense~~ offenses under ~~61-6-304~~
17 61-6-301 and 61-6-302, 5 points;

18 (k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not
19 apply to operating a motor vehicle within a period of 180 days from the date the license expired);

20 (l) speeding, 3 points;

21 (m) all other moving violations, 2 points.

22 (3) There ~~shall~~ may not be ~~no~~ multiple application of cumulative points when two or more charges
23 are filed involving a single occurrence. If there are two or more convictions involving a single occurrence,
24 only the number of points for the specific conviction carrying the highest points ~~shall be~~ is chargeable
25 against that defendant.

26 (4) "License" means any type of license or permit to operate a motor vehicle."

27 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0297, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act which clarifies the offenses of failing to carry an approved insurance card in a motor vehicle and failing to exhibit the insurance card upon demand.

ASSUMPTIONS:

Implementation of SB297 will increase the number of driver control actions taken by the Department of Justice, including counseling sessions with licensed drivers and habitual offender revocations. At this time, the increased workload would be handled under the present law base budget.

FISCAL IMPACT:

Passage of SB297 will have immaterial fiscal impact on state government.

David Lewis 2-7-95
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Steve Doherty 2/7/95
STEVE DOHERTY, PRIMARY SPONSOR DATE
Fiscal Note for SB0297, as introduced

SB 297

he understood to be a clarification of current law.

SENATOR HALLIGAN said he sensed the Democrats on the committee would want to accomplish what the bulk of the communities would want to do. He did not think a 2/3 vote would be a problem.

CHAIRMAN CRIPPEN said he was trying to reach a committee conclusion whether or not the 2/3 vote was required.

SENATOR DOHERTY said it was his understanding that whatever they would adopt would also include parks that had predated the action or public lands that had predated the actions. He wanted the understanding to be included in the record.

Closing by Sponsor:

SENATOR KEATING closed on SB 211. He reminded the committee that SB 211 was not just a "Billings bill." He recognized the source was Billings and that Billings officials were brought in to testify. He said that County Attorney Jovick from Livingston had stopped by to voice his support for the bill as well. He said it affects all of Montana.

The Senator said the agricultural community was putting together a similar bill to grant further immunity for recreational use of agricultural property. There is a perception that there is not sufficient protection right now for immunity from lawsuits for recreational use. He said landowners perceive the liability threat and many are taking unnecessary precautions to protect themselves. He said the grapevine would work if this measure was passed and people would soon realize they were not in harm's way or jeopardy in allowing recreational use. He said taxpayers' dollars would be better spent in other areas than in litigations over cities and towns. He asked the committee to take away some of the anxiety and give peace of mind to landowners in allowing use of volunteer property.

HEARING ON SB 297

Opening Statement by Sponsor:

SENATOR STEVE DOHERTY, Senate District 24, Great Falls, presented SB 297. He said it stemmed from an unhealthy interest he held in uninsured motorists and their privilege to use the roads in Montana without the concurrent responsibility of maintaining what was deemed to be adequate insurance on those vehicles. He said the issue was brought to his attention by a deputy county attorney in Cascade County who felt that they needed to add points to an individual's license when they are convicted of driving without insurance. Last session, he said, the fines were increased and seizure of license plates and registration were allowed. This bill would allow for some clean-up on the first three pages. The language on page 4 would simply put five points on to the record of a uninsured motorist violation. He said the

fines are helping the prosecutors in Cascade County in seizing the license plates, and this bill would add another hammer in helping law enforcement officials curb uninsured motorist violators.

{Tape: 1; Side: B; Approx. Counter: 00}

Proponents' Testimony:

Dean Roberts, Administrator, Motor Vehicle Division, said the measure originally came out of the task force of the Attorney General in 1990 which he and SENATOR DOHERTY served on. He said his department supported this bill. He said if a person was convicted of not having insurance, it was already a five-point violation. Under the new bill, it would give a five-point violation for any of the insurance violations on a conviction. He said that normally a law officer asks for insurance proof and if the person does not have a card, it does not mean they don't have insurance. The law officer would write a ticket for "failure to carry the card". If the person goes to court and produces the insurance proof, and there is no violation at all. This bill also makes it a five-point violation for a conviction of "failure to carry the card," and he urged support of the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR JABS asked SENATOR DOHERTY that since the only time they usually find people without insurance is in an accident, he wondered how enforceable this law would be.

SENATOR DOHERTY said that was the primary reason that the Department of Justice, the Montana Automobile Dealers and the insurance companies have been concerned about uninsured motorists. They want to put out the message that if people want to drive, buy a car, spend money on gas, plates and registration, part of that deal is insurance. He said it is improving compliance with the law.

SENATOR LARRY BAER told SENATOR DOHERTY he, too, was all for getting tougher on people who don't insure themselves properly. He had suffered two accidents in the past year by uninsured motorists. But he had reservation about five points for forgetting to put the proof in the glove compartment. He wondered if they were really getting to the heart of the problem.

SENATOR DOHERTY said they were. He said a person would be written for "failure to carry the card." If, however, they go to the judge and say it was misplaced and they are really insured,

they would not be convicted. If they cannot show the judge the proof of insurance, then the judge would assign the five point violation.

SENATOR BARTLETT asked the sponsor if, in addition to the conviction, would they also get the five points for not having insurance.

Brenda Nordland from the Attorney General's Office, answered the question by saying that when the officer writes the ticket, it would be written for one offense, not two, and they will only be convicted for one offense. Typically, she said, it would be the "failure to exhibit" offense.

SENATOR BARTLETT asked for clarification through the process.

Brenda Nordland told the committee that under the current habitual offender law that a person's drivers' license would be revoked if, after three years they had accumulated 30 conviction points, or six of these violations.

SENATOR BARTLETT asked about current law.

Brenda Nordland stated that the five-point violation would be assessed only if a person was convicted of not having insurance. Due to oversight, there was no five-point conviction for "failure to produce."

CHAIRMAN CRIPPEN asked for clarification. He posed a problem wherein he might get picked up for no insurance card available.

Brenda Nordland said that unless an admission was made at the time of the stop, it is most likely that a person would be cited under 302, the failure to exhibit. If a person makes an admission, then a person would be cited under 304. If a person was unable to produce proof of insurance, they would be charged with "failure to exhibit." However, if a person has merely forgotten to carry the proof, there is an escape clause, and no violation would be issued.

THE CHAIRMAN thought that before he would lose his plates, registration and ultimately, the car.

Brenda Nordland explained that under current law, the first offense would be a fine of \$250.00 to \$500.00. The second offense would carry a \$350.00 to up to 10 days in jail. The third or subsequent offense would carry a fine of \$500.00 or 10 days in jail or both. The second offense or subsequent offense would also carry the penalty of forfeiture of plates and registration for a 180-day period. She said it is a tiered system and the status as a driver begins to change the first time.

SENATOR LINDA NELSON asked Dean Roberts for comment. He said

both "failure to carry the card" and "failure to carry insurance" have exactly the same penalties, exactly the same fines and exactly the same provisions when you lose your plates. The only difference is "failure to carry the card" is not a five-point violation. This bill would make it a five-point violation to be convicted of "failure to carry the card" along with all the other penalties.

SENATOR JABS asked if there was a fine on the first offense.

SENATOR DOHERTY explained that the first offense fine would be \$250.00 to \$500.00 and perhaps up to 10 days in jail, and be assessed a five-point conviction.

SENATOR SHARON ESTRADA asked if that was for the first offense of not carrying the card.

SENATOR DOHERTY said that if the person actually had insurance, there was an escape clause and no penalty would be assessed.

CHAIRMAN CRIPPEN asked if a person was driving some else's car, who would be responsible for the insurance?

SENATOR DOHERTY answered that it would be the owner that was required to have proof of insurance, not the driver.

Closing by Sponsor:

SENATOR DOHERTY closed SB 297 and thanked the committee for a good hearing. He said it was an area that was in need of additional clarification and to make it clear to those who drive without insurance that there could be consequences because most accidents involve injury. There should be consequences for irresponsible behavior, such as driving without insurance.

EXECUTIVE ACTION ON SB 314

Motion/Vote: SENATOR JABS MOVED THAT SB 314 BE TABLED. The MOTION CARRIED unanimously by oral vote.

Discussion: CHAIRMAN CRIPPEN said that the sponsor wished the action on the bill, until a later date.

EXECUTIVE ACTION ON SB 297

Motion: SENATOR AL BISHOP MOVED THAT SB 297 DO PASS.

Discussion: SENATOR RIC HOLDEN asked the sponsor for clarification.

SENATOR DOHERTY explained that the bill would allow prosecutors to plug a hole, not done initially, by making people pay on their permanent record for their habitual offenses if they fail to have insurance. A person would know they would have a fine, may be sent to jail and suffer a suspension of their license in a three-year period.

CHAIRMAN CRIPPEN reminded the committee that a drivers' license is not a right, but a privilege.

Vote: The MOTION CARRIED unanimously by oral vote.

HEARING ON SB 276

Opening Statement by Sponsor:

SENATOR MIGNON WATERMAN, Senate District 26, Helena, opened the hearing on SB 276, explaining that the bill would prohibit minors from being in the area where gaming machines are in a gambling facility. She said that two incidents in the past year prompted the bill. She saw a woman with a child on her lap and a toddler with her, playing a gaming machine. After one-and-one-half hours, the group was still there. Later, driving into Helena, she saw a billboard that advertised for a local casino with the words, "gaming machines, adult and children, family atmosphere." She said she was surprised because she did not know they had legalized children's gaming machines in this state. On checking, she found out they were amusement games that most people thought would be at fairs and in arcades. She found that some establishments have interspersed them with adult machines, so that children could play with a roll of tokens while the parents played the gambling machines. She did not think that was the intent of the legislature, which intended "adults only" machines. They were tied to alcohol licenses which do restrict the premises in which gaming can occur. She said her research showed that the two incidents she related could not have occurred in any other state in the nation. She distributed a sheet with some language taken from other states. (EXHIBIT 4) She read from those provisions.

SENATOR WATERMAN said it was not the intent in Montana for children to be near gaming machines. She believed it to be an adult entertainment and did not think it was an appropriate atmosphere for children to be permitted in.

Proponents' Testimony:

Mary Ellerd, Executive Secretary of the Montana Juvenile Probation Officers' Association, supported the bill, and asked that the committee consider the language that refers to youth court on lines 24 and 25. They did not believe that the intention would be to charge a minor with an offense, but as the language on lines 4 and 5 state, "making it a criminal offense

DATE _____

2-9-95

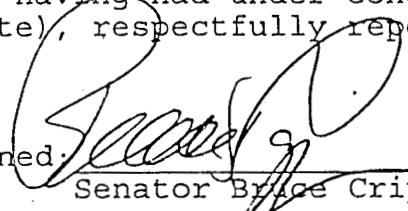
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 9, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 297 (first reading copy -- white), respectfully report that SB 297 do pass. .

Signed: 

Senator Bruce Crippen, Chair

 Amd. Coord.
RWS Sec. of Senate

341245SC.SRF

{Tape: 1; Side: A}

HEARING ON SB 297

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD 24, opened the hearing on SB 297 by saying it was brought as an attempt to deal with the lack of responsibility of those in Montana who drive without insurance. He felt this bill was a good recommendation from the Department of Justice to further tighten down the penalties. He said it would create the offense of failing to carry or exhibit the insurance card and it would cost five points upon conviction.

Proponents' Testimony:

Dean Roberts, Administrator, Motor Vehicle Division, Department of Justice, mentioned the background for this bill in previous legislation. He said that when an officer stops someone for a traffic violation, they would be cited for that violation plus another violation for failure to carry an insurance card. He said that in 90% of the cases, the person does not have insurance. The penalty for failure to carry an insurance card would be identical to the penalty for failure to have insurance except for the five-point violation. The bill provided that the five-point violation will extend to failure to carry the card.

Brenda Nordlund, Department of Justice, spoke in favor of SB 297.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. DANIEL MC GEE described a scenario where in his business the vehicles are in the field when the updated insurance cards arrive in the mail. Sometimes the cards get buried on the desk so they might not be in the vehicle when involved in an accident. He wanted to know if the driver would be subject to the penalty.

Ms. Nordlund answered, "No." She directed him to current law as shown on page 2, line 23 - 25, to validate her answer.

REP. LOREN SOFT asked if the Department of Justice had ever considered doing random safety checks.

Ms. Nordlund said there is a random safety check program which the Highway Patrol engages in now, but could not speak to that, but knew it was not for the purpose of checking on drivers license or insurance. There is a privacy clause in the state Constitution and this becomes a delicate balance in weighing the compelling state interest against individual privacy.

REP. JOAN HURDLE asked for a description of the differences between SB 297 and SB 113 which also dealt with drivers without insurance.

Ms. Nordlund said these bills were sent in under independent requests. SB 113 was already in the process when this one came out and they had decided to move forward with both bills. SB 113 would extend the possible outside penalty up to six months' imprisonment in the county jail for violation under "304." Under SB 297 a five-point penalty was included. All the penalties with SB 297 would come under section 304. The result would be six months' imprisonment under SB 113 with an additional five points under this bill.

REP. HURDLE asked if it was correct to conclude that they would work well together to strengthen the law in this area.

Mr. Nordlund answered, "Absolutely."

REP. WILLIAM BOHARSKI said it appeared that the only thing the bill did was to add five points for failure to carry the card, but if the card was produced, they would not receive five points.

Ms. Nordlund said that was true.

REP. BOHARSKI asked why they were doing this.

Ms. Nordlund replied that if they did not have the card and failed to carry the nonexistent card, they would be convicted of failing to carry the card. Only for appearance in justice court to show a card that was valid at the time of the citation can a conviction be avoided. Subsequent purchase of the insurance would not bring a dismissal of the charge.

REP. BOHARSKI and Ms. Nordlund discussed the process whereby an officer makes the decision about what citation to issue both under current law and under this proposed legislation.

Ms. Nordlund said the only change in the bill was to attach the five points for failure to carry an insurance card and all the other changes on the bill were simply to move text around to make the bill clearer. There were some sections deleted which did not appear elsewhere in the bill on lines 12 through 16.

REP. BOHARSKI asked if it was true that the person could not be convicted if they produced a card and Ms. Nordlund affirmed that was true. And then he asked how they could give the person five points.

Ms. Nordlund said the division does not put one point against the record unless there is a conviction for the underlying offense. They are not notified until after the conviction. A citation does not appear on the record.

REP. BOHARSKI asked for further clarification of the need for the bill.

SEN. DOHERTY explained the difference as being simply that if convicted currently, there would be no five points added to the record. The bill would provide an additional penalty of five points. He said it becomes a policy question about whether it is a good idea to add the points.

CHAIRMAN CLARK clarified that there could be no conviction if the driver had insurance.

REP. CLIFF TREXLER compared the reckless driving five points with the number of points for lack of insurance. He said that if the person drove without license plates, he would only get two points but could speed and only get three points, have a moving violation and get two points. Then he asked if a five-point penalty wasn't just a little high by comparison.

Mr. Roberts said he didn't think so because in all cases where a driver did not have insurance, the innocent other party is automatically affected. Generally they are found to be without insurance when involved in an accident.

REP. DEB KOTTEL asked what the five points would do to the insurance rates.

Mr. Roberts said he could not answer that directly.

REP. KOTTEL said her point was that made insurance even more unaffordable for those individuals who could not afford it, and asked if they had not perpetuated to some degree the fact that they would continue to not have insurance and force them to drive without it.

Mr. Roberts said that was true. But he said there were people who just had not made insurance a priority and could purchase it and most of these laws were directed at those people. He suggested considering that driving is still considered a privilege under the law. If it were a right, there would be other ways to take care of people who did not have insurance. He said they did not see much of a segment of people who drive carefully without insurance, but rather that they see those who abuse traffic laws of all kinds.

REP. ELLEN BERGMAN asked if it was already against the law to drive without liability insurance and what the penalty for that was.

Mr. Roberts said there was a three-tier penalty structure:

1. A fine and possible jail time and five points,
2. A larger fine, possible jail time, lose the plates, and five point penalty, and

3. A fine, possible jail time and lose plates plus a five point violation.

REP. BERGMAN asked how this was different if they would already add the five points.

Mr. Roberts answered that conviction of the failure to have insurance would bring a five-point violation. This bill would add the conviction of the failure to carry the card.

REP. BERGMAN asked REP. WILLIAM RYAN to answer the same question.

REP. RYAN said the difference was that when the law enforcement officer asks if the driver has insurance, and the person says they do, but have no card, he can write the citation for not having proof of insurance in the vehicle. The judge cannot put points on the record on that violation currently even if convicted, but the bill would provide for the addition of the points.

REP. AUBYN CURTISS asked if they were to understand that they could get two five-point situations which would be for failure to have insurance as well as failure to carry the proof of insurance.

CHAIRMAN CLARK said only one ticket would be issued.

REP. CURTISS asked at what level of points a person would lose their drivers license or license plates.

SEN. DOHERTY said the habitual traffic offender language was outlined on page 3 and page 4. To lose a license, he thought that accumulation of 30 points over a three-year period qualified.

REP. BOHARSKI asked if it was a matter of policy or a matter of law that the officer would not write a citation for both violations.

SEN. DOHERTY believed it was a matter of policy.

REP. BOHARSKI asked if he did write it for both and the person was convicted of both, would he receive ten points.

SEN. DOHERTY said it was his understanding that he could.

{Tape: 1; Side: A; Approx. Counter: 40.7}

Closing by Sponsor:

SEN. DOHERTY said the intent of the bill was to clear up something which was neglected in previous legislation. The idea behind it was that if this law were violated, there would be a penalty. Habitual traffic offender programs with points does

mean something to someone who might have to walk to work for a year if they continued to violate. He said it was important to remember that the person who usually gets hurt the most in those kinds of instances is the one who is the innocent person. In response to the situation where someone could not afford the insurance, he felt the issue was responsibility.

HEARING ON HB 272

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, SD 13, said SB 272 was significant in that it would change the requirements of the surviving joint tenant for filing with the inheritance tax division. This would simplify the requirements for the surviving spouse by eliminating the need to file where taxes are not due and no probate is involved.

Proponents' Testimony:

Jeff Miller, Administrator, Income and Miscellaneous Tax Division, Department of Revenue, explained that the bill was intended to streamline the process which now involves a great deal of paperwork only to certify that no tax is due. He said the department encouraged the passage of SB 272.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. CURTISS asked if this was new language.

SEN. GROSFIELD answered that subsection 2 was new language which amended the current section of law.

REP. CURTISS asked what the purpose of all the information was as outlined on page 4 and if it was required under current law.

SEN. GROSFIELD said it was, under 7-4-2613, MCA, which deals with local government and recording. He said the amendment was on page 3, line 17.

REP. DIANA WYATT asked what the policy was related to the retroactive applicability going back to July 1979.

SEN. GROSFIELD recalled that it was there to cover some properties which had not gone through the system immediately.

Mr. Miller responded that the retroactive date reflected that it was in July 1, 1979, that spouses became exempt in the first

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/8/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

REP. LIZ SMITH said she did not like the bill and thought there was a significant amount of people who are neglectful of buying insurance and there are many who feel they cannot afford it. She felt there was a way to be creative in helping people have access to insurance coverage for their cars without more regulations and damages. She felt this was oppressive and had the effect of discouraging obtaining insurance.

CHAIRMAN CLARK asked her to elaborate on her solution to the problem.

REP. SMITH said they could be given a tax credit or some incentive to buy insurance rather than addition of fines.

REP. DEB KOTTEL opposed the amendment because it would negatively affect people who simply could not afford insurance and explained the experience she had had with people in that category.

REP. WYATT felt the issues were being confused. She pointed out that the court may suspend a required fine upon determination that the offender was unable to pay the fine. She felt that making the fine equal to the rational conscious choice they were making by not having insurance would act as a deterrent. She contended that if they didn't have the money for the insurance, why would they have the money for the car and the gas.

REP. SHEA said she had a problem with it in that they did not consider the reality of those who are in need and that she would oppose the amendment.

Vote: The motion carried 12 - 7 by roll call vote.

Motion/Vote: REP. WYATT MOVED SB 113 BE CONCURRED IN AS AMENDED. The motion carried 18 - 1, REP. SMITH voted no.

EXECUTIVE ACTION ON SB 297

Motion: REP. BILL CAREY MOVED SB 297 BE CONCURRED IN.

Discussion: CHAIRMAN CLARK reminded the committee that this bill provided for five points on a driving record for failure to carry or display the insurance card.

REP. HURDLE spoke in favor of the bill because it addressed the irresponsibility of people who failed to carry automobile insurance.

REP. KOTTEL said she understood that the points would not go on the driving record if the person could show the court proof of insurance.

REP. MC GEE felt the point was to make the responsible party responsible. He thought it was important to remember that it is a privilege and not a right to use the highways.

REP. KOTTEL said she had a problem with the issue of parity in that physicians and lawyers are not required to carry insurance, but that they were legislating the requirement for automobile insurance. She said that there are many other tortious actions in society where people are not being forced to carry insurance.

REP. MC GEE replied that no one has to go to a doctor or lawyer and he did not have to share those choices with other people, but he did have to share the highways with those who would choose not to be insured.

REP. HURDLE asked if it was possible to post a bond rather than purchasing car insurance.

REP. KOTTEL said self-insurance was allowed in Montana.

REP. CLIFF TREXLER discussed parity from the standpoint of the numbers of points allocated for serious and reckless driving habits as compared with the number of points for failure to carry insurance.

Motion: REP. TREXLER MOVED TO AMEND SB 297 BY REDUCING THE POINTS FROM FIVE TO THREE.

Discussion: CHAIRMAN CLARK explained what occurs, from a law enforcement perspective, with people not carrying insurance.

REP. SHEA and REP. LINDA MC CULLOCH clarified the issuance of citations and dismissal of charges in various scenarios. Line 22 on page 2 addressed and clarified the issues.

REP. MC GEE opposed the amendment because the issue behind the high point value was the effect of the lack of insurance on other persons and their property.

REP. TREXLER said his motion to reduce the amount of points did not relate to the responsibility of the driver, but to make it fit into the other areas of offense in reckless driving and other endangerment of life issues.

Vote: The motion failed on voice vote.

Vote: The motion to concur carried 17 - 2, REPS. SMITH and TREXLER voted no.

EXECUTIVE ACTION ON SB 218

Motion: REP. HURDLE MOVED SB 218 BE CONCURRED IN.

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 3/15/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski			✓
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes			✓
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ 8:30	✓	
Rep. Loren Soft	✓ *		✓ * returns late & miss
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

March 15, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 297 (third reading copy -- blue) be concurred in.

Signed: Bob Clark
Bob Clark, Chair

Carried by: Rep. Ryan

Committee Vote:
Yes 17, No 2

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